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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

DARREL TREMAINE CARTER,

Plaintiff,

v.

DAVID PALAY, ET AL.,

Defendants.

\* CIVIL ACTION NO. 2:13-cv-3181

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\* JUDGE MINALDI

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\* MAGISTRATE JUDGE KAY

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**MEMORANDUM RULING**

Before the court is the Report and Recommendation [Doc. 7] of the Magistrate Judge, to which the plaintiff has filed no Objection. For the following reasons, the plaintiff's Motion for Leave to Proceed *In Forma Pauperis* [Doc. 2], as amended by his subsequent Motion for Leave to Proceed *In Forma Pauperis* [Doc. 6], be and hereby is **DENIED**.

**FACTS & PROCEDURAL HISTORY**

The plaintiff, Earl Darrel Tremaine Carter, filed this civil rights complaint on December 2, 2013.<sup>1</sup> On December 9, 2013, the plaintiff was instructed to either submit the required filing fee or to properly complete his application to proceed *in forma pauperis*.<sup>2</sup> The plaintiff then submitted a second application to proceed *in forma pauperis*, but the application did not correct the previously noted deficiency.<sup>3</sup>

**LAW & ANALYSIS**

The court herein adopts the findings of the magistrate judge in dismissing the plaintiff's claim under Federal Rule of Civil Procedure 41(b).<sup>4</sup> The plaintiff is cautioned that he has

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<sup>1</sup> Compl. [Doc. 1].

<sup>2</sup> Sec. P. Deficiency Order [Doc. 4].

<sup>3</sup> Mot. for Leave to Proceed *in forma pauperis* [Doc. 6].

<sup>4</sup> Report and Recommendation [Doc. 7], at 1-2.

already had two claims dismissed for frivolity.<sup>5</sup> A prisoner is barred from proceeding *in forma pauperis* if any three actions have been dismissed on the grounds of frivolity. 28 U.S.C. § 1915(g). The only exception to this bar is if the prisoner is “under imminent danger of serious physical injury.” *Id.* A complaint is frivolous if it lacks an arguable basis in law or fact. *Hutchins v. McDaniels*, 512 F.3d 193, 196 (5th Cir. 2007) (citing *Black v. Warren*, 134 F.3d 732, 734 (5th Cir. 1998)). Therefore, should the plaintiff have another claim dismissed as frivolous, he will be barred from proceeding *in forma pauperis* on future claim with limited exception. Accordingly,

**IT IS ORDERED** that Darrel Tremaine Carter’s Motion for Leave to Proceed *In Forma Pauperis* [Doc. 2], as amended by his subsequent Motion for Leave to Proceed *In Forma Pauperis* [Doc. 6], be and hereby is **DENIED**.

Lake Charles, Louisiana, this 16 day of October, 2014.

  
PATRICIA MINALDI  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> See *Carter v. Calcasieu Parish*, No. 2:13-cv-2324-PM-KK, (W.D. La. Jun. 17, 2014); and *Carter v. Calcasieu Parish*, No. 2:13-cv-02323-JTT-KK, (W.D. La. Jan. 22, 2014).